**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.13337 OF 2006**

**Dated: 11th July, 2006.**

Between:

Toddy Tappers Cooperative Society,
Banswada (V & M), Nizamabad District,
Rep. by its President Mr. M. Nara Goud,
S/o. Satya Goud. … Petitioner

And

1. The Proh. & Excise Superintendent,
   Kamareddy, Nizamabad District
   And 2 others. …Respondents

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**O R D E R :**

The petitioner society is granted four toddy shop licences under the provisions of A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 for sale of toddy at Banswada which are valid up to 31-3-2007. The petitioner society was also granted a depot licence dated 3-10-2005 which is valid upto 30-6-2006. Admittedly, the depot is also situated in Banswada. While so, on 5-5-2006, the Excise Inspector along with staff inspected the toddy depot of the petitioner society situated in the premises No.2-4-144. However, no toddy was found in the depot, and the person available in the depot stated that the toddy had already been dispatched to the sale counters. In the circumstances, the authorities have collected the left over toddy from the consumed bottles and on testing the same it was found adulterated with Chloral Hydrate. On the basis of the same, Cr.No.43/2006-2007 dated 5-5-2006 was registered under Section 37 (a) of the A.P. Excise Act, 1968 and that apart the licences of the depot as well as the four shops were suspended pending enquiry. Though the petitioner society preferred appeal against the order of suspension, it appears that the appellate authority declined to interfere. While so, show-cause notice dated 17-6-2006 was issued calling upon the petitioner society to explain as to why the licences should not be cancelled. The petitioner submitted a detailed explanation denying all the allegations. Thereafter, the impugned order dated 20-6-2006 was passed canceling the licences of all the four toddy shops as well as

depot licence of the petitioner society under Section 31 (1) (b) of the A.P. Excise Act, 1968. The said order is under challenge in this writ petition.

The learned Counsel for the petitioner vehemently contended that the action of the respondents in cancelling the licences of four shops of the petitioner society on the ground that the left over toddy found in the empty bottles in the depot was found adulterated is arbitrary and illegal. The learned Counsel also points out that no samples were collected from any of the four shops and no inspection was conducted nor any allegations were made in respect of the said shops. Hence, the learned Counsel contended that Section 31 (1) (b) of the Act is not attracted and therefore the order of cancellation of licence of four shops is illegal and liable to be set aside.

On behalf of the respondents, a detailed counter-affidavit has been filed stating that since the depot is a place where the consumed bottles of toddy from constituent shops have been brought regularly to the depot for cleaning and for filling the toddy pooled in the depot, it was rightly concluded by the respondents that the petitioner society committed breach of terms and conditions of the licences and therefore the licences of the petitioners were rightly cancelled.

At the outset, it is to be noted that under Section 31 (1) (b) of the Act, the licensing authority is entitled to cancel the licence. in the event of any breach of any of the terms and conditions of the licence.

In the case on hand, even assuming that the allegation of adulteration of toddy with Chloral Hydrate is correct, the said allegation was only in respect of the depot and consequently the 1st respondent is competent to cancel the depot licence alone. In the absence of any allegation of breach of terms and conditions of the licences of shops and even without inspecting the shops, the respondents were not justified in cancelling the licences merely on the basis of panchanama conducted in the depot.

It is true that under Section 31 (2) of the Act in case the licensee

holds other licence, it is open to the authority to cancel any other licence granted to such person, however the same can be resorted to only after affording an opportunity to the licensee to putforth his version.

In the circumstances, viewed from any angle, the respondents had committed an error in cancelling the licences of the four toddy shops held by the petitioner society.

Accordingly, the impugned order to the extent of cancellation of licences of four shops of the petitioner society is hereby set aside. However, this shall not preclude the respondents to initiate appropriate proceedings following due process of law. It is made clear that this Court shall not be understood to have expressed any opinion with regard to the finding recorded by the 1st respondent so far as the depot licence held by the petitioner society is concerned and it is left open to the petitioner society to wok out the remedy of appeal as available under Section 63 of the A.P. Excise Act, 1968 so far as cancellation of the depot licence is concerned.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 11-7-2006

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